

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place
Boston, MA 02108
(617)727-2293

BENJAMIN CORTES,
Appellant

Docket Nos. D-08-238, D-07-416

v.

DEPARTMENT OF CHILDREN
AND FAMILIES,
Respondent

Attorney for the Appellant:

Benjamin Cortes,
Pro se

Attorney for the Respondent:

Edward F. Berlin, Atty.
Department of Children and Families
1537 Main St.
Springfield, MA 01103

Commissioner:

Daniel M. Henderson

DECISION

Pursuant to M.G.L.c. 31, s.43, Benjamin Cortes (hereinafter the "Appellant" or "Cortes") filed appeals with the Civil Service Commission (hereinafter "Commission") on December 3, 2007, claiming a lack of just cause to suspend him for 3 days (filed under Docket No. D-07-416); and filed on September 17, 2008, (filed under Docket No. D-08-238) claiming that the Department of Children and Families (hereinafter "DCF"), and did not have just cause to suspend him for 10 days and demote him from his supervisory position (Social Worker D) to a supervisee position (Social Worker C) for his failure to adequately supervise the social workers, (Social worker C) under his supervision.

The Appellant filed timely appeals at the Commission on both appeals. A Full Hearing was held on October 28, 2009 at the offices of the Commission, and was digitally recorded. The hearing was declared private.

FINDINGS OF FACT

Seven (7) exhibits (Exhibits 1A-7A) and Stipulated Facts A were entered into evidence under Docket Number D-07-416. Fifteen (15) exhibits (Exhibits 1B-15B) and Stipulated Facts B were entered into evidence under Docket Number D-08-238. Based on these exhibits, stipulations and the testimony of the following witnesses:

For the Appointing Authority:

- Nancy Prostak, DCF Area Director for Worcester East

For the Appellant:

- Benjamin Cortes, Appellant

I make the following findings of fact:

1. The Appellant was a tenured civil service employee employed by the Department of Children and Families (hereinafter “DCF”) since October 26, 1980. He became a supervisor in the Worcester East Area Office in 1996. (Stipulated Facts A and B, Testimony of Appellant)
2. Nancy Prostak, (hereinafter “Prostak”) was the Area Director of the Worcester East Area Office. She was responsible for the overall management of the office. Marta Medina, (hereinafter “Medina”) was an Area Program Manager (hereinafter “APM”) at this office, part of her responsibility was for supervising the Appellant. (Testimony of Prostak, Stipulation B)
3. In Cortes’ 2005-2006 annual performance review certain deficiencies were noted. Among them, it was specifically noted that he needed to insure that the placement of children

followed the appropriate protocol. Additionally it noted that he needed to review policies and procedures with workers to insure good case practice. (Exhibit 5A)

4. In Cortes' 2006-2007 annual performance review certain deficiencies were also noted.

Among them, it was specifically noted that he needed improvement in the area of his clinical decision making; he had made some clinical decisions in cases that put children at risk. The review stated that, "This is unacceptable and needs immediate correction." (Exhibit 5A)

5. According to DCF's Family Resource Policy, when children are taken into their custody, the preference is to place them with a Kinship Family, i.e. a relative or family member. Before such placement is finalized a background check of everyone living in the home must be done and a DCF social worker must inspect the home. These procedures are in place in order to insure the safety of the children being placed. The mission of DCF is to protect children and to strengthen families. When mistakes are made or protocol is not followed, children could be seriously injured or could die. (Testimony of Prostack, Exhibit 6A)

6. The DCF becomes involved in a family or child matter when a report of child abuse or neglect is filed with the DCF, under G.L. c. 119 § 51A. This initial report is referred to as a "51A". The DCF is obligated to initiate its investigation within 2 hours of receiving the initial report and complete the investigation within 24 hours if the child is in immediate danger of further abuse or neglect. Otherwise the investigation must be commenced within 2 days and completed within 10 working days. The investigation shall include a home visit at which the child is viewed. If the report is supported by a certain threshold being met, a DCF Investigator (social worker) is assigned to the case. This supported report is referred to as a "51B". Thereafter a "care and protection" or "C&P" petition is filed in the juvenile court. Thereupon, custody is assigned by the court to the DCF. If custody is assigned to the DCF, it

then begins its' child placement and approval process. (Testimony of Prostack, G.L. c. 119 § 51A & § 51B)

7. Prostack referred to a Memo issued on 10/01/07, of which all staff was notified, outlining the expectations for establishing "service plans" for the child or family. An "assessment" is completed by the social worker when the 51B is opened and the initial extensive background investigation is done. A "full assessment" may take up to forty-five (45) days to complete. The "service plan" is a written document or contract actually signed by both the family and the DCF social worker, outlining all of the tasks and duties of the family. The service plan, once written-up must be taken by the social worker to the family for signing. (Testimony of Prostack, Exhibit 5B)
8. The DCF supervisors, (Social Worker D) including the Appellant oversee five (5) social workers (Social Worker C) or supervisees and each social worker in the Worcester-East area is assigned on average 20-23 cases. Roseann Ritacco was one of the social workers in the Appellant's unit to be supervised by him. The Appellant, like each supervisor would have five social workers and up to 100 cases under his supervision. (Testimony of Prostack, Stipulation B)
9. DCF Supervisors are responsible for the work of their supervisees. The responsibilities of a supervisor include monitoring case work and information exchange, providing supervisees with day-to-day support, direction and decision making and to oversee or reassign cases in any social worker's absence. Supervisors are expected to meet with their supervisees and with Area Program Managers weekly or in the event of any critical incident. Each supervisor and supervisee is familiar with the published written policy and procedure or "protocols" and regulations of the DCF. (Exhibit 4B, Testimony of Prostack)

10. The responsibilities of a social worker are to visit all families who have open cases monthly, document any interactions the workers have with the families, contact any outside agencies, school officials or members of the medical profession who may have had contact with the family (called “collaterals”), create service plans, and ensure that the service plans are being followed. (Testimony of Prostack)

11. The social workers are obligated to make at least monthly visits to the family. The social workers also must document and record all contacts and activities with the family or providers, “collaterals”. The DCF tries to involve many collaterals. The social workers are assisted in their record keeping by an automated “dictation system” with a computer program called “family net” which employs convenient drop-down menus. The supervisors also use this system for entries and review of social workers’ activities on cases. (Testimony of Prostack)

November 28, 2007 3Day Suspension, Docket No. D-07-416

12. When children are in DCF custody, DCF policy requires a social worker to visit the home where the children are placed to ensure that they are safe and were placed in a suitable environment. (Exhibit 1A)

13. The Appellant supervised social workers Megan Quinn (hereinafter “Quinn”) and Matthew Lefebvre (hereinafter “Lefebvre”). (Stipulated Facts A)

14. On September 10, 2007 Meaghan Quinn was informed via an email from Attorney Laurie Raphaelson, that a C & P had been filed on behalf of certain named children, “R” family. The email also informed her that a hearing had been scheduled for Friday (September 14, 2007). (Exhibit 2A)

15. A “C & P” is a Care and Protection Petition filed in the Juvenile Court on behalf of children who DCF believe are suffering from abuse and or neglect. In response to such a petition, a Juvenile Court judge could award custody of the children named in the petition to DCF.
(Testimony of Prostek)
16. On September 13, 2007, Medina met with and instructed the Appellant to conduct a visit to the homes where the “R” family children would be placed and conduct a background check if DCF were to receive custody of them at the upcoming court hearing. (Testimony of Prostek, Exhibit 1A)
17. The Appellant assigned the “R” family case to Quinn, who was on vacation when the court hearing was scheduled. Lefebvre assumed her responsibilities in her absence, and attended the hearing on September 14, 2007. DCF took custody of the three “R” children as a result of the hearing. (Exhibit 1A)
18. Lefebvre immediately notified both the Appellant and Quinn by e-mail of the court results and a summary overview of the “R” family case and its status, on the court date of September 14, 2007, with notice that the next court date would be December 6th @ 2PM. (Exhibits 1A, 3A and testimony of Prostek)
19. Not only did the Appellant not visit the homes where the children were placed, he failed to assign this task to Quinn when she returned from vacation or to assign it to Lefebvre.
(Exhibit 1A)
20. On September 24, 2007, the Appellant told Medina that one child had been placed with his paternal aunt without DCF approval; one child and her newborn were living with another aunt, also without DCF approval; and one child was still living in the home from which she

had been removed - and had not been seen since September 10, 2007. (, Testimony of Prostak, Exhibit 1A)

21. In a November 28, 2007 letter, Prostak informed the Appellant that she had found that his behavior was insubordinate and a “blatant disregard of the directives outlined by [the] supervisor as well as the policy of the Department.” She informed him that he would be suspended for three (3) days without pay. She advised the Appellant that if this behavior continued, he would be subject to more severe discipline in the future. (Exhibit 1A)
22. Prostak believed that there was just cause to issue this suspension because Cortes’ failure to follow through was an act of insubordination; it was a clear policy violation which exposed the children to the risk of harm or injury; it set a poor example for his supervisees and because of Cortes’ history of failing to follow policy and making poor clinical decisions. (Testimony of Prostak, Exhibits 4A and 5A)
23. The Appellant filed a timely appeal with the Commission. (Stipulated Facts A)
September 10, 2008, Ten Day Suspension and Demotion, Docket No. D-08-238
24. The Appellant was responsible for supervising social worker Roseanne Ritacco (hereinafter “Ritacco”) (Stipulated Facts B, Testimony of Prostak)
25. Ritacco was responsible for handling the “B” case. The “B” family consisted of the mother, “N,” age 17; N’s 11 month old child “Z;” “A,” age 16; “K,” age 9; “S,” age 7; and “P,” age 5. (Testimony of Prostak, Testimony of Appellant, Exhibit 14B)
26. In the “B” case, the agency assessed three problems: the condition of the home was deplorable, the mother had substance abuse issues, and one of the children was a truant. (Testimony of Prostak, Exhibit 3B)

27. The deplorable condition of the home was not fully apparent until Worcester Police entered the home to execute an outstanding warrant against the mother. (Exhibit 8-11B) The 51A was filed by a member of the Worcester Police Department. The 51A noted that, "The home is in deplorable condition. The home is covered in trash from the front to the back. The reporter is not even able to get into the back area due to the amount of trash....The reporter said that 'nobody should live in this home due to its condition.' " (Exhibit 9B)
28. There was trash, debris, dirt and mold in the home. There was no running water, working toilet, or fresh food. There was minimal space for the children to sleep. (Exhibit 8-11B)
29. The "B" children were immediately removed from the home by DCF on May 1, 2008. (Exhibit 10B)
30. The "B" children had lived in these conditions for over fifteen (15) months. The "B" family had been an open case with DCF since November 10, 2006. The "B" family's history with DCF dated back to November 6, 2001. (Testimony of Prostak, Exhibit 11B)
31. On May 2, 2008 a Child Abuse/Neglect Investigation (51B) regarding the allegations raised in the 51A was completed by DCF. (Exhibit 10B)
32. After a case is opened by DCF a comprehensive "Assessment" is done of the family. This document becomes the basis for developing a "Service plan" which is essentially a contract between DCF and each family member outlining the tasks each is responsible for completing. (T Prostak)
33. The most recent Assessment in the "B" case was approved on January 22, 2007. Among the issues it highlighted were deplorable living conditions in the home, concerns about substance abuse by both parents, primarily alcohol, and one of the children's excessive absences from school. The assessment concluded, "Both parents need to be encouraged to participate in a

substance abuse evaluation to determine level of abuse or treatment and to follow through with the recommendations of such as well as to participate in counseling. The subject children need a safe, clean and structure (sic) home environment conducive to their general wellbeing.” (Exhibits 11B and 12B)

34. The Service Plan in effect from February 2, 2008 to August 2, 2008 included in its list of tasks that the parents ensure a safe, clean and nurturing home environment for their children; participate in DCF identified services such as evaluation and counseling if needed; and participate in a substance abuse evaluation at Spectrum to determine the level of abuse/treatment and follow through. DCF was assigned the task of making all service referrals for the family. (E 13)
35. Ritacco has been the on-going social worker in the “B” case since the beginning of February 2007. When Cortes made this assignment to Ritacco, he violated DCF policy by failing to meet with Ritacco in order to review the case record and plans for the family. His method of assignment was to leave the case record on Ritacco’s desk. (T Prostack)
36. As Ritacco’s supervisor, the appellant was required to meet with Ritacco weekly and ensure that each of her cases had supervisory attention at least bi-weekly. According to the Central Region Protocol he was required to “...be sufficiently familiar with the case material of supervisees in order to provide adequate day-to-day support, direction, and decision-making...” This was a critical function in the office: necessary in order to ensure that families are treated properly and those children under DCF care are protected from neglect or abuse. (Testimony Prostack and Exhibit 4B)
37. According to Ritacco’s Dictation Reports (compiled as part of DCF’s official case record), she made her initial visit to the “B” home on February 23, 2007. Her last visit before the

filing of the 51A on May 1, 2008 was on March 18, 2008. The dictation reflects a total of 15 home visits. (Exhibit 14B)

38. Prostack reviewed each of Ritacco's dictation entries describing the 15 visits mentioned in paragraph 23 above. In her entry describing her first visit, on February 23, 2007, Ritacco writes that the home was in deplorable condition and that the house is so packed with things all over that it may be a fire hazard. She offered homemaker services but the family declined. There was no indication in this entry that Ritacco actually viewed each room in the home as required by DCF policy. (Testimony of Prostack and Exhibit 14B)
39. Nowhere in the dictation describing the 14 subsequent visits does Ritacco describe the condition of the home. (Exhibit 14B)
40. During the time that this was case open, DCF rendered no services and the mother failed to participate in a substance abuse program she was obligated to attend. (Exhibit 14B, Testimony of Prostack)
41. Ritacco never fully inspected the family's home. She did not inspect the bathroom or the children's sleeping area. She never ensured that the family was carrying out its service plan, never contacted collaterals and only wrote sparse dictation. (Testimony of Prostack, Exhibit 14B)
42. The Appellant never contacted either Prostack or Medina about Ritacco's underperformance. He did not establish a work plan for Ritacco. (Testimony of Prostack)
43. The "B" children lived in these deplorable conditions for over fifteen (15) months. (Testimony of Prostack)
44. Ritacco never planned any unannounced visits to the home. (Testimony of Prostack)

45. DCF management reviewed the dictation in all of Ritacco's open cases. Ritacco made consistent deficiencies or omissions similar to this "B" children case in nearly all of her other cases; including: lack of assessments and unsigned, missing or outdated service plans, lack of services identified, lack of contact with collaterals and repeated dictation entries with identical language. (Testimony of Prostack)
46. As her supervisor, the Appellant had easy access to all of Ritacco's dictation in each of her assigned cases through the DCF automated-dictation computer system, with the "family net" program. According to office policy he should have periodically reviewed her dictation as part of his supervisory oversight. (Exhibit 4B and T Prostack)
47. Additionally, the Appellant as Ritacco's supervisor completed her previous annual EPRS's and noted her similar deficiencies in other cases but failed to follow up on any of those deficiencies. (Testimony of Protak)
48. The quality of the social work performed by Ritacco on the "B" case as well as her other cases and the Appellant's supervision of Ritacco in those cases was very poor. The record in each case must include a current assessment, a signed service plan that is current, dictation reflecting contact with all collaterals and dictation reflecting monthly home visits. The dictation should describe the home, the appearance of the children and parents as well as the substance of the conversation with each family member. The dictation record should also reflect the efforts being made to complete the tasks outlined in each family's service plan. The record in each of Ritacco's assigned cases was deficient. (T Prostack)
49. The quality of the supervision that the appellant provided Ritacco regarding the "B" case was egregious. He violated the clear directives of the supervision protocol in effect in the DCF office where he worked. He was required to "...be sufficiently familiar with the case material

of supervisees in order to provide adequate day-to-day support, direction, and decision-making..." He failed to exercise proper oversight thus allowing the children to be exposed to significant danger and to be allowed to live under conditions in which nobody should have to live. This was a critical function in the office: necessary in order to ensure that families are treated properly and those children under DCF care are protected from neglect or abuse.

(Testimony of Prostak and Exhibit 4B)

50. Prostak believed that the Appellant is not qualified to act as a supervisor at DCF. Allowing him to remain in that capacity would expose DCF children and families to an unacceptable risk. The position of supervisor at the DCF is a "critical position. Prostak read the Appellant's 2008-2009 annual EPRS form for the time since his demotion, during which he has performed as Social Worker C. Prostak did not change her opinion; asserting that the evaluation of "meets" performance standards as a social worker is inadequate and she would expect an evaluation of "exceeds" performance standards to be necessary to be considered for promotion to the supervisor or Social Worker D position.(Testimony of Prostak, Exhibits 7A and 15B)

51. In a letter dated June 13, 2008, the Appellant received notice of a disciplinary hearing for June 26, 2008. He was advised that the DCF was contemplating disciplinary action because of his failure to adequately supervise a worker assigned to his unit. (Stipulated Facts B, Exhibit 2B)

52. The DCF disciplinary hearing was conducted by Valerie Lovelace-Graham (hereinafter "Lovelace-Graham"), the regional director, at the Central Regional Office. The Appellant was represented by his union representative. (Stipulated Facts B, Exhibit 3B)

53. After the DCF disciplinary hearing and a thorough review of the evidence produced at the hearing, it was determined that the Appellant failed to adequately supervise Ritacco. Lovelace-Graham informed the Appellant in a letter dated September 10, 2008 that he would be suspended for ten (10) days, demoted to the position of ongoing social worker (from Social Worker D to Social Worker C), and transferred to the North Central Area DCF office in Leominster. (Stipulated Facts B, Exhibit 3B)
54. The Appellant testified at this commission hearing regarding his career at DCF generally, describing himself as: hard working, dedicated and caring. He believes that he has helped many individuals and families and that he is being “scapegoated” on this matter. He also claimed that he did not receive any direction on or notice of his deficiencies. Upon questioning regarding his lack of effective supervision of Ritacco on the “B” case and her other assigned cases; he defended himself by simply stating that he relied on her as his “eyes and ears” and that there were very high case loads to oversee. He supervised Ritacco the same way he supervised the other 4-5 social workers in his unit. So in effect, all of the social workers under his supervision were self-supervised. He admitted that Ritacco did not do a good job and it was a mistake for him to rely 100% on Ritacco. He admitted that a supervisor’s role is to verify the reports of the social worker. Yet, he admitted: “I trusted my social worker...I didn’t check.” He admitted that he could have easily reviewed Ritacco’s dictation through the automated system. He admitted there were glaring omissions in Ritacco’s dictation, which should have put him on notice; such as a lack of description of the home visits with reference to conversations with the family and concerns or needs of the family. (Testimony of Appellant)

55. The Appellant portrayed himself as a victim while blowing his own horn regarding his past performance and accomplishments. He is especially proud of the educational and personal success of his own children. This hearing officer pointed out that his pride as a father should have propelled him to greater efforts to provide a better opportunity and environment for the families and children under his professional supervision. This hearing officer also pointed out to the Appellant that his approach to his supervisory role seemed to be one of having conversations and discussing everything rather than applying himself in a proactive, efficient and common sense manner. It was pointed out that he could have taken the 5 most serious cases from each of his 5 social workers and visited each household on a monthly basis between 7:00-8:00 AM on a school day. This effort, to see if the children get off to school; timely, rested, clean, fed, dressed and otherwise prepared for the day would have provided vital and informative family knowledge. As a father, he would know that the morning family rush is one of the most challenging family routines and failing to meet it is of great consequence to children. The Appellant seemed to generally agree with the effectiveness of this proposed effort. Nevertheless, the Appellant reverted to the role of a self described victim. (Testimony and demeanor of Appellant)

56. I find the Appellant's testimony to be unreliable, as it is emotional, inconsistent and self serving. Part of his testimony comprised admissions of serious ongoing omissions and oversights and the balance comprised excuses and self promotion. He lacks a sufficient common sense understanding of the duties and responsibilities of his supervisory position and the dire potential consequences for failing to perform those duties and meet those responsibilities. (Testimony and demeanor of Appellant)

57. Nancy Prostack is a good witness. She is professional, knowledgeable and exact in her testimony. She answered directly and promptly from memory or review of documentation. She did not volunteer extraneous or advantageous testimony. She only gave accurate and substantiated answers. She did not retract or modify any of her testimony on cross-examination. Her demeanor and presentation is solid and professional, so as to engender confidence and respect. She did not exhibit any signs of bias or antipathy toward the Appellant. I find her to be a very credible and reliable witness. (Testimony and demeanor of Prostack)

CONCLUSION

Under G.L.c.31, §43, a tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L.c.31, §41, may appeal to the Commission. The Commission has the duty to determine, under a “preponderance of the evidence” test, whether the appointing authority met its burden of proof that “there was just cause” for the action taken. G.L.c.31, §43. See, e.g., Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823, (2006); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass App.Ct.473,477 (1995); Town of Watertown v. Arria, 16 Mass.App Ct. 331,334, rev.den.,390 Mass. 1102, (1983).

An action is "justified" if "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The

Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983) The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.' " Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of the "merit principle" which governs Civil Service Law that discipline must be remedial, not punitive, designed to "correct inadequate performance" and "separating employees whose inadequate performance cannot be corrected." G.L.c.31,§1.

The Appointing Authority's burden of proof is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) The Commission must take account of all credible evidence in the record, including whatever may fairly detract from the weight of any particular evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65 (2001)

It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. "[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance." E.g., Leominster v.

Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003) (where live witnesses gave conflicting testimony at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing)

In performing its appellate function, “the commission does not view a snapshot of what was before the appointing authority . . . the commission hears evidence and finds facts anew. . . . [after] ‘a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer’ . . . For the commission, the question is . . . ‘whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.’ ” Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003) (affirming Commission’s decision to reject appointing authority’s evidence of appellant’s failed polygraph test and prior domestic abuse orders and crediting appellant’s exculpatory testimony) (*emphasis added*). cf. Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (inconsequential differences in facts found were insufficient to hold appointing authority’s justification unreasonable); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (commission arbitrarily discounted undisputed evidence of appellant’s perjury and willingness to fudge the truth); Town of Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev.den., 390 Mass. 1102, (1983) (commission improperly overturned discharge without

substantial evidence or factual findings to address risk of relapse of impaired police officer) See generally Villare v. Town of North Reading, 8 MCSR 44, reconsid'd, 8 MCSR 53 (1995) (discussing need for de novo fact finding by a “disinterested” Commissioner in context of procedural due process); Bielawski v. Personnel Admin’r, 422 Mass. 459, 466, 663 N.E.2d 821, 827 (1996) (same)

In reviewing the commission’s action, a court cannot “substitute [its] judgment for that of the commission” but is “limited to determining whether the commission’s decision was supported by substantial evidence” and is required to ‘give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it. . . This standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom.’ ” Brackett v. Civil Service Comm’n, 447 Mass. 233, 241-42 (2006) and cases cited.

The evidence in this case clearly demonstrates a long term pattern of very poor social work by Ritacco as reflected by the records in 13 of her open cases and Prostack’s testimony. She violated DCF policy in each of those identified cases. Her failures potentially exposed numerous families and children to unnecessary risk. As her supervisor, the Appellant was responsible to ensure that proper social work was being practiced and that Ritacco followed DCF policy. He utterly and completely failed to do this. The evidence in the “B” case was most compelling. Nobody should have to live in the conditions shown in the photographs admitted as exhibits and as described in the 51A and 51B. If the Appellant had done his job properly, the children would not have been allowed to live under those deplorable conditions during the 15 months that the case had been assigned to Ritacco. The credible evidence before me as well as my own questioning of the Appellant leads me to the conclusion that he is not qualified to be a supervisor

at DCF. This is especially the case in light of the critical responsibility placed on supervisors at DCF. They must ensure that their supervisees are doing their job properly. If mistakes are made, children could be injured or could die; neither is acceptable. The substantial evidence presented by the DCF is generally corroborated by the Appellant's own testimony. He admitted to numerous oversights and omissions in Ritacco's dictation records and therefore her very poor performance on these cases. In sum, the Appellant described his supervision of Ritacco as Ritacco being self-supervised. She was his "eyes and ears" and that he would only become aware of a situation if Ritacco or another social worker in his unit notified him directly. The Appellant performed negligible supervision of the social workers in his unit, despite the ease and convenience of utilizing the computer automated dictation system for supervisory review. Ritacco performed very poorly while supervising herself. The Appellant admitted that he supervised Ritacco the same way he supervised the other 4-5 social workers in his unit. The Appellant was negligent in his supervisory duties and routinely violated the DCF policy and procedures, and established practice causing a great risk to the children and families under his and the DCF's custody and supervision.

I find that the appointing authority has proven by a preponderance of the credible evidence in the record, that they had just cause to discipline him.

Having determined that it was appropriate to discipline the Appellant, the Commission must determine if DCF was justified in the level of discipline imposed, which, in this case, was a demotion as well as a ten (10) day suspension without pay. Concerns about Cortes' ability to follow office protocol as well as his poor clinical judgment were clearly identified in Cortes' past two performance reviews. The most recent review warned that this behavior "...is unacceptable and needs immediate correction." As recently as December 3, 2007, Cortes had completed a

three day suspension because of his failure to follow a clear directive from his supervisor, resulting in the violation of DCF policy. This exposed children in DCF custody to an unnecessary and unacceptable risk and was even more egregious given his role as a supervisor at DCF. It is clear that Cortes' unwillingness or inability to carry out his supervisory responsibilities rendered him unfit to continue in that role. I therefore find that the appointing authority has proven by the preponderance of the evidence that there was just cause to demote Cortes from the position of Supervisor D to that of Supervisor C and to issue him a ten (10) day suspension without pay.

The DCF has met its burden of proof by a preponderance of the evidence and was justified in suspending the Appellant for three (3) days on November 28, 2007, on Docket No.D-07-416 and for demoting and suspending him for ten (10) days on September 10, 2008, on Docket No. D-08-238.

The mission of the DCF is to protect children from abuse and neglect and strengthen families. The Appellant's failure to follow DCF protocol and his failure to properly supervise his subordinates impaired this mission and jeopardized the safety and well being of families under DCF care. Given the harm these families were exposed to, the DCF was justified in suspending on the Appellant on the two occasions and demoting him.

For all the above reasons, the Appellant's appeals filed under Docket Numbers D-08-238 and D-07-416 are hereby *dismissed*.

Civil Service Commission,



Daniel M. Henderson

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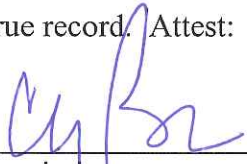
Civil Service Commission,



Daniel M. Henderson
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Stein, Commissioners) [McDowell nonparticipation] on November 4, 2010.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Benjamin Cortes (*pro se*)

Edward F. Berlin, Atty.
Executive Office of Health and Human Services
140 High Street, 5th Floor
Springfield, MA 01105